

STATE OF MICHIGAN
COURT OF APPEALS

JAMES A. HOLMES,

Plaintiff-Appellee,

v

KAREN M. ROMAN-HOLMES, a/k/a KAREN
M. BURCHFIELD,

Defendant-Appellant.

UNPUBLISHED
December 18, 2007

No. 271936
Kent Circuit Court
Family Division
LC No. 97-005874-DM

Before: Bandstra, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order awarding plaintiff his unpaid attorney fees. We reverse.

Defendant argues that, because her alleged "wrongful conduct" of moving Devon, the parties' minor daughter, 98.86 miles from Grand Rapids to Ludington was legal, the trial court erred in awarding plaintiff attorney fees. We review a trial court's decision to grant attorney fees for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). A trial court abuses its discretion when it fails to select a principled outcome. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The trial court awarded plaintiff attorney fees based on defendant's "wrongful conduct." A trial court may award a party attorney fees if the fees "were incurred because the other party refused to comply with a previous court order, despite having the ability to comply." MCR 3.206(C)(2)(b). Similarly, a trial court may award attorney fees if the requesting party was forced to incur the fees because of the other party's unreasonable conduct. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).¹

¹ MCR 3.206(C)(2)(a) indicates that an attorney fee award may be justified if one "party is unable to bear the expense of the action, and . . . the other party is able to pay," but the trial court did not rely on this provision to award the fees in this case.

The court stated as follows regarding the award of attorney fees:

The rationale for this ruling is what I perceive to be Ms. Burchfield's wrongful conduct.

Ms. Burchfield indicates that she believes that she complied with joint custody provisions that are required under law. It is my impression, which I believe has been strongly supported by the testimony, that nothing could be further from the truth.

Ms. Burchfield's actions have been vindictive, not been child centered, and focused on tearing down a daughter/father relationship.

I would like to highlight a portion of the testimony where Ms. Burchfield called the Kent County Sheriff's deputies to retrieve Devon less than a month ago, and felt that this was appropriate conduct. When asked to re-evaluate that action, she indicated that she would do it again.

I can think of nothing more detrimental to this beautiful girl who has survived within this chaotic[] dysfunction than the punitive decisions her mother continues to make without much thought of the impact on Devon.

Ms. Burchfield enjoys a lifestyle with two beautiful homes, current vehicles, and vacations paid for by her new husband, and has the wherewithal to pay this amount in full since she alleged that one reason for the move was higher paying jobs.

I don't find that Ms. Burchfield's actions have been child centered nor in Devon's best interests. I find that Ms. Burchfield has been hurtful and inappropriate, and that this matter could have been resolved with more appropriate conduct and conversations.

Further, Ms. Burchfield appears to follow only those orders that are convenient to her, and that meet her stated desire to move to Leelanau.^[2]

I do believe that a full award of attorney fees is necessary in this case after a review of the testimony and exhibits.

Although the court was not entirely clear regarding how defendant's actions were wrongful, it appears that the court viewed defendant's move from Grand Rapids to Ludington as unreasonable. We note, however, that defendant's conduct of moving Devon the 98.86 miles from Grand Rapids to Ludington was legally permitted by statute. MCL 722.31(1) allows a

² Defendant initially wanted to move to Leelanau, but this request was objected to by plaintiff, and she moved instead to Ludington.

custodial parent to change the legal residence of a child if the new home is less than 100 miles from the child's residence at the time the complaint for divorce was filed. Accordingly, the move itself was not a permissible basis on which to award attorney fees to plaintiff.

However, the joint custody provision of the judgment of divorce required that plaintiff and defendant consult and attempt to agree before making major decisions regarding Devon's education. It is arguable that the court awarded attorney fees because it believed that defendant acted unreasonably in changing Devon's school from a Catholic school in Grand Rapids to a public school in Ludington. However, defendant informed plaintiff in a July 2005 letter that the public school was the only option in Ludington and invited plaintiff to research the school. This letter demonstrated that plaintiff was acting reasonably and inviting input with regard to the issue of schooling. Plaintiff then moved the trial court to order that Devon continue her Catholic schooling, and the trial court eventually ruled that Devon had to be enrolled at a Catholic school in Manistee, near Ludington. This Court overturned this ruling, indicating that an evidentiary hearing needed to be held on the schooling issue. After this Court's ruling, and before the evidentiary hearing in February 2006, defendant enrolled Devon in the Ludington Public School System. We cannot conclude that this action by defendant was unreasonable such that an attorney-fee award was justified, given that Devon needed to attend school and given that this Court had reversed the trial court's initial ruling ordering that Devon attend the Catholic school in Manistee.

The only other apparent basis for the trial court's award of attorney fees was defendant's behavior in calling the police to retrieve Devon when plaintiff was late one time in dropping off the child. Plaintiff claimed that he had not received the information that the drop-off time had been changed to 5:00 p.m. from 7:00 p.m. While it may have been wiser to avoid police involvement in light of the child's young age, we simply cannot conclude that defendant's actions in enforcing the changed drop-off time was so unreasonable as to justify the award of attorney fees in this case. Nor did defendant's behavior in this regard force plaintiff to incur the attorney fees at issue. *Borowsky, supra* at 687.

The court simply did not identify a valid basis for the award of attorney fees. The court abused its discretion in awarding the fees, and we therefore reverse the trial court's order.

Reversed.

/s/ Richard A. Bandstra

/s/ Patrick M. Meter

/s/ Jane M. Beckering